

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANET PEREZ-ENCINAS and WENDY PEREZ,

No. C 05-05112 CRB

MEMORANDUM AND ORDER

Plaintiffs,

V.

AMERUS LIFE INSURANCE CO.,

Defendant.

Plaintiffs Janet Perez-Encinas and Wendy Perez filed this action against defendant AmerUs Life Insurance Company, formerly known as Central Life Assurance Company, for breach of contract and breach of the implied covenant of good faith and fair dealing. Plaintiffs claim that defendant improperly made payments to their estranged father that should have been sent to them under an annuity policy. Now pending before the Court is defendant's motion for summary judgment on the grounds that the claims are time barred and that defendant made the annuity payments in accordance with the terms of the policy. After carefully considering the parties' memoranda and supporting exhibits, and with the benefit of oral argument, defendant's motion is hereby GRANTED.

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BACKGROUND

2 In 1988, attorney Gene A. Cain and his son, attorney Stephen A. Cain, settled a
3 wrongful death lawsuit regarding plaintiffs' mother. First Am. Compl., ¶¶ 10, 15. Cain used
4 a part of the settlement to purchase an annuity for various members of the Perez family.¹ Id.
5 at ¶ 12-13. At the time of this transaction, Perez-Encinas was 12 years old and Wendy Perez
6 was 9. Id. at ¶ 10.

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According to Gene Cain, he intended the annuity to have three distinct components.
8 Decl. of G. Cain, ¶ 2. First, Juan Perez, plaintiffs' father, was to be paid \$900 per month for
9 12 years, at which time his youngest daughter, Alicia Perez, would turn 18 years old. Id.
10 Second, the three daughters were to be paid \$10,000 apiece on their respective 18th, 19th,
11 20th, and 21st birthdays. Id. Third, the daughters were to receive \$75,000 on their
12 respective 30th birthdays. Id. The insurance company disputes this characterization, stating
13 that the contract designated only a single payee, Gene Cain, who would receive all of the
14 payments unless he designated or assigned the payments to another person in writing. See
15 Decl. of V. Cox, ¶ 2-3; Def.'s Ex. B, p. 4.

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Gene Cain purchased the annuity from defendant through Patrick Chambers, who was
17 employed by Selective Settlements NW.² Decl. of G. Cain, ¶ 3. Cain claims that he relayed
18 to Chambers the above objective. Id. at ¶ 5. The annuity application and the annuity policy,
19 which together form the annuity contract, list Gene Cain as the "Annuitant" and "Owner."
20 Def.'s Ex. A and B. Juan Perez and the three daughters are listed as "Beneficiar[ies]" in the
21 application. Def.'s Ex. A. The daughters are specifically identified as the beneficiaries of
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The plaintiffs are Janet Perez-Encinas, formerly known as Janet Hernandez, and
25 Wendy Perez. The claims of the third daughter, Alicia Perez, were dismissed pursuant to a
26 stipulation because she received the disputed payments. See Stipulations of Good Cause;
27 Decl. of R. Ergo, ¶ 2.

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Plaintiffs submit evidence of what Chambers purportedly said to Cain during the
application and negotiation of the annuity. To the extent that it would be relevant, this
evidence is inadmissible hearsay and is not considered by the Court. The Court finds that
plaintiffs have not made a sufficient showing that Chambers was an agent of defendant;
therefore, no hearsay exception applies.

1 the \$10,000 and \$75,000 payments. See Def.'s Ex. A. Cain prepared an application for the
2 annuity with the help of Chambers. Decl. of G. Cain, ¶ 5-6.

3 Gene Cain signed the application, which Chambers then submitted to defendant for an
4 underwriting decision. Id. at ¶ 7. Defendant approved the application and Cain then paid
5 over the balance of the settlement proceeds to defendant to secure the agreement. Id. at ¶ 7;
6 Pls.' Ex. 2. Cain later received a copy of the annuity contract in the mail. Decl. of G. Cain, ¶
7 7; Def.'s Ex. B. Under the terms of the policy, Cain had 10 days from his receipt of the
8 contract during which to cancel the contract and obtain a full refund. Def.'s Ex. B at 1.

9 Defendant sent the first \$900 monthly support check due under the annuity to Cain.
10 Decl. of Gene Cain, ¶ 8. Gene Cain called defendant, which advised him that in order to
11 have the monthly checks sent directly to Juan Perez, Cain would have to send a letter to
12 defendant instructing defendant to change draft payee to Juan Perez. Id. Cain dispatched the
13 requested letter, dated July 20, 1988 directing that "all further checks due" be made out to
14 Juan Perez. Def.'s Ex. C. Although Cain states that he never intended his letter as an
15 assignment of plaintiffs' rights under the annuity, defendant interpreted the letter as such an
16 assignment to Juan Perez. Decl. of G. Cain, ¶ 9; Decl. of V. Cox, ¶ 5-6. Thereafter, the \$900
17 monthly payments went to Juan Perez, as did the \$10,000 payments Cain contends were
18 intended for plaintiffs. First Am. Compl., ¶ 14; Decl. of V. Cox, ¶ 6.

19 In November 2002, plaintiff Perez-Encinas learned from Stephen Cain, for the first
20 time, the specific financial arrangements stemming from her mother's death. First Am.
21 Compl. ¶ 15; Decl. of J. Hernandez, ¶¶ 3, 6. Likewise, plaintiff Perez had never known
22 about the arrangements until she learned of them from Perez-Encinas. Decl. of W. Perez, ¶
23 3. Neither of the plaintiffs had learned of the annuity from their father, from whom they
24 were separated in 1990 by Child Protective Services, which determined that Juan Perez was
25 unable to care for his children. First Am. Compl., ¶ 14; Decl. of J. Hernandez, ¶ 2; Decl. of
26 W. Perez, ¶ 2. Perez-Encinas is now 30 years old; Wendy Perez is 27. See Def.'s Req. for
27 Judicial Notice, Ex. A, ¶ 7.

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1 Gene Cain sent a letter to defendant in January 2003 instructing defendant not to send
2 any more money to Juan Perez and instead to pay the plaintiffs. First Am. Compl., ¶ 17;
3 Decl. of G. Cain, ¶ 11; Pls.' Ex. 4. Thereafter, defendant received a notarized affidavit from
4 Juan Perez relinquishing his right to the annuity payments. Def.'s Ex. E. Since 2003,
5 payments that have come due under the policy have gone to Alicia Perez (\$10,000 paid on
6 June 15, 2004, Def.'s Ex. G) and plaintiff Encinas-Perez (\$75,000 paid on December 13,
7 2005, Decl. of V. Cox, ¶ 12).

8 PROCEDURAL HISTORY

9 On September 27, 2005, plaintiffs Encinas-Perez, Wendy Perez and Alicia Perez filed
10 suit against defendant in Contra Costa County Superior Court. That action stated causes of
11 action for (1) breach of contract; (2) declaratory relief; and (3) breach of the implied
12 covenant of good faith and fair dealing. Plaintiffs also sought punitive damages. On
13 December 9, 2005, defendant removed the action to this court on the basis of diversity
14 jurisdiction. See 28 U.S.C. 1441(b).

15 On May 3, 2006, AmerUS filed this motion for summary judgment. On May 30,
16 2006, at the request of plaintiffs' counsel and upon stipulation of the parties, the Court
17 agreed to continue the hearing on the defendant's Motion for Summary Judgment from June
18 9 to July 21, 2006. On June 28, 2006, the Court denied a second request from plaintiffs'
19 counsel, upon stipulation of the parties, to continue the hearing date from July 21 to August
20 25, 2006.

21 Plaintiffs filed their Opposition one week late, on July 7. On that same day, plaintiffs,
22 pursuant to stipulation with defendant, filed a First Amended Complaint and dismissed
23 without prejudice the claims of Alicia Perez. The amended complaint also dropped
24 plaintiffs' request for declaratory relief relating to the \$75,000 payments. Accordingly, the
25 only remaining claims are compensatory damages of \$40,000 each for Perez-Encinas and
26 Wendy Perez as well as punitive damages. On July 14, 2006, defendant filed its Reply. Oral
27 argument was held on July 21, 2006.

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STANDARD OF REVIEW

I. Legal Standard for Summary Judgment

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). Rule 56 does not require that the relief granted to a successful movant always be dispositive of the full matter in controversy. A claimant may seek a summary judgment ruling “for a summary judgment in the party’s favor on all or any part [of the claim] thereof,” Rule 56(a), and a party defending a case may seek a ruling “in the party’s favor as to all or any part [of a claim, counterclaim, or cross-claim] thereof.” Rule 56(b).

A principal purpose of the summary judgment procedure is to isolate and dispose of factually unsupported claims. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). A party moving for summary judgment that does not have the ultimate burden of persuasion at trial (here, defendants) has the initial burden of producing evidence negating an essential element of the non-moving party’s claims or showing that the non-moving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial. Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving party does not satisfy its initial burden, the non-moving party has no obligation to produce anything and summary judgment must be denied. Id. at 1102-03. If, on the other hand, the moving party has satisfied its initial burden of production, then the non-moving party may not rest upon mere allegations or denials of the adverse party’s evidence, but instead must produce admissible evidence that shows there is a genuine issue of material fact for trial. See id. at 1103. A genuine issue of fact is one that could reasonably be resolved in favor of either party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-50 (1986). A dispute is “material” only if it could affect the outcome of the suit under the governing law. Id. at 248.

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1 **II. Legal Standard for Interpreting Insurance Contracts under California Law**
2 Under California law, interpretation of an insurance policy is a question of law.
3 Waller v. Truck Ins. Exchange, Inc., 11 Cal. 4th 1, 18 (1995); see Cal. Ins. Code § 101
4 (stating that annuities are regulated as life insurance). Whether a contract is ambiguous is
5 also a matter of law. United States v. Sacramento Mun. Util. Dist., 652 F.2d 1341, 1343 (9th
6 Cir. 1981). While insurance contracts may have special attributes, they are nevertheless
7 contracts to which the ordinary rules of contract interpretation apply. Bank of the West v.
8 Superior Court, 2 Cal. 4th 1254, 1264 (1992).

9 The fundamental rules of contract interpretation are based on the premise that the
10 interpretation of a contract must give effect to the “mutual intention” of the parties. Waller,
11 11 Cal. 4th at 18 (internal citations omitted). The court must look first to the language of the
12 contract in order to ascertain its plain meaning or the meaning a layperson would ordinarily
13 attach to it. Id. (citing Cal. Civ. Code § 1638; Reserve Ins. Co. v. Pisciotta, 30 Cal. 3d 800,
14 807 (1982)). In searching for a plain meaning, a court is to interpret the language of an
15 agreement in its “ordinary and popular sense, unless used by the parties in a technical sense.”
16 Id. (citing Cal. Civ. Code § 1644) (internal quotation marks omitted). A policy provision
17 will be considered ambiguous when it is capable of two or more constructions, both of which
18 are reasonable. Bay Cities Paving Grading, Inc. v. Lawyers’ Mutual Ins. Co., 5 Cal. 4th 854,
19 867 (1993). Language in a contract must be interpreted as a whole, and in the circumstances
20 of the case, and cannot be found to be ambiguous in the abstract. Bank of the West, 2 Cal.
21 4th at 1265. Courts will not strain to create an ambiguity where none exists. Reserve Ins.
22 Co., 30 Cal. 3d at 807.

23 Thus, if possible, intent is determined solely from the written provisions of the
24 insurance policy. Waller, 11 Cal. 4th at 18; Cal. Civ. Code § 1639 (internal citation omitted).
25 If the policy language is clear and explicit, it governs. Id. However, if this “plain meaning”
26 approach fails to resolve the ambiguities, a court is to look at the objectively reasonable
27 expectations of the policy holder. Montrose Chem. Corp. v. Admiral Ins. Co., 10 Cal. 4th
28 645, 666-67 (1995). Finally, if the “reasonable expectations” approach does not resolve the

1 ambiguity, the ambiguity is to be interpreted against the drafter (the insurer), since that party
2 caused the ambiguities to exist. AIU Ins. Co. v. Superior Court, 51 Cal. 3d 807, 822 (1990)
3 (citing Cal. Civ. Code § 1654).

4 **DISCUSSION**

5 **I. Statute of Limitations**

6 Defendant argues that plaintiffs' claims for breach of contract and breach of the
7 implied covenant of good faith and fair dealing are time barred. The statute of limitations on
8 a claim for breach of a written contract or breach of the implied covenant of good faith and
9 fair dealing is four years. Cal. Code Civ. Proc. § 337(1); Krieger v. Nick Alexander Imports,
10 Inc., 234 Cal. App. 3d 205, 220-21 (1991). A third-party beneficiary is subject to the same
11 limitations period as the promisee to the contract that created the rights of the beneficiary.
12 See Skylawn v. Superior Court, 88 Cal. App. 3d 316, 319 (1979); see also Sanders v. Am.
13 Cas., 269 Cal. App. 2d 306, 310 (1969). All parties agree that the most recent payment that
14 allegedly gave rise to the breach was made on September 22, 1999, more than four years
15 prior to September 27, 2005, the date upon which this action was filed.

16 A cause of action for breach of contract accrues at the time of the breach of contract,
17 and the statute of limitations begins to run at that time regardless of whether any damage is
18 apparent or whether the injured party is aware of his right to sue. Niles v. Louis H. Rapoport
19 & Sons, Inc., 53 Cal. App. 2d 644, 651 (1942); Neel v. Magana, Olney, Levy, Cathcart &
20 Gelfand, 6 Cal. 3d 176, 187 (1971) ("The plaintiff's ignorance of the cause of action . . . does
21 not toll the statute."). However, "[t]he harshness of this rule has been ameliorated in some
22 cases where it is manifestly unjust to deprive plaintiffs of a cause of action before they are
23 aware that they have been injured." Moreno v. Sanchez, 106 Cal. App. 4th 1415, 1423
24 (2003). Under the "discovery rule" recognized by California courts, a cause of action
25 accrues when the plaintiff discovers or could have discovered, through the exercise of
26 reasonable diligence, all of the facts essential to his cause of action. April Enterprises, Inc. v.
27 KKTV, 147 Cal. App. 3d 805, 826 (1983).

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1 California courts have long applied the delayed discovery rule to claims involving
2 fraud, difficult-to-detect injuries, or the breach of a fiduciary relationship. See Moreno, 106
3 Cal. App. 4th at 1423-1424; see also Neel, 6 Cal. 3d at 190 (holding that in an action for
4 professional malpractice against an attorney, the cause of action does not accrue until the
5 plaintiff knows, or should know, all material facts essential to show the elements of that
6 cause of action). Traditionally, however, the discovery rule had not been held applicable to
7 breach of contract actions except in cases involving fraud or misrepresentation. See, e.g.,
8 Watts v. Crocker-Citizens Nat'l Bank, 132 Cal. App. 3d 516 (1982) (fraud); Balfour, Guthrie
9 & Co. v. Hansen, 227 Cal. App. 2d 173 (1964) (misrepresentation). In April Enterprises, the
10 court extended the discovery rule beyond the plaintiff's breach of fiduciary duty cause of
11 action to encompass its breach of contract action as well.

12 In April Enterprises, the California Court of Appeal first applied the discovery rule to
13 a breach of contract action not involving fraud, holding that the rule was properly applied to
14 "breaches which can be, and are committed in secret and, moreover, where the harm flowing
15 from those breaches will not be reasonably discoverable by plaintiffs until a future time."
16 147 Cal. App. 3d. at 832. Twenty years after its decision in April Enterprises, the Court of
17 Appeal revisited its earlier holding. Gryczman v. 4550 Pico Partners, Ltd., 107 Cal. App. 4th
18 1 (2003). Expanding on its decision in April Enterprises, the Court of Appeal noted that it
19 had applied the discovery rule in that earlier breach of contract action because it found that
20 "[a] common thread seems to run through all the types of actions where courts have applied
21 the discovery rule." Id. at (citing April Enterprises, 147 Cal. App. 3d at 831). The Gryczman
22 court identified three characteristics of appropriate applications of the discovery rule: (1)
23 "[t]he injury or the act causing the injury, or both, have been difficult for the plaintiff to
24 detect"; (2) "the defendant has been in a far superior position to comprehend the act and the
25 injury"; and (3) "the defendant had reason to believe the plaintiff remained ignorant he had
26 been wronged." Id. The court emphasized that two overarching principles guide a court in
27 assessing whether the discovery rule should apply in a given case. First, "plaintiffs should
28 not suffer where circumstances prevent them from knowing they have been harmed." Id. at

1 5-6. Second, “defendants should not be allowed to knowingly profit from their injuree’s
2 ignorance.” Id.

3 Here, plaintiffs did not learn about their potential entitlement to the \$10,000 annuity
4 payments until November 2002, when plaintiff Janet Perez-Encinas spoke with Stephen Cain
5 on the telephone. Further, Perez-Encinas and her sister were removed from their father’s
6 care in 1990, when he was deemed unfit to care for them, and therefore never knew that he
7 was receiving the \$10,000 payments. While the Court is sympathetic to plaintiffs’ claims,
8 the Court finds no basis upon which to apply the discovery rule.

9 This case does not involve a “secretive breach” similar to that in April Enterprises.
10 The fact that plaintiffs simply did not know about their alleged right to payments under the
11 annuity does not, by itself, convert the alleged breaches into secretive breaches. Nor does
12 this case concern a breach that was fraudulently concealed or misrepresented by defendant.
13 Defendants did nothing to hide, mask, or keep secret the terms of the annuity, which were
14 well-known and available in written form to the parties involved.

15 Nor is the discovery rule applicable under Gryczman. In Gryczman, the dispute
16 surrounded a right of first refusal to purchase real property that required the defendant to
17 notify the plaintiff if a bona fide offer was made on the property. 107 Cal. App. 4th at 3-4.
18 There, the plaintiff happened to learn that the property had been conveyed to a third party
19 only when he drove by the property, more than four years after the property was sold. Id. at
20 4. In concluding that the discovery rule should apply in that case, the court emphasized that
21 the lack of notice was not only the cause of plaintiff’s failure to learn of the injury but was in
22 fact the conduct that caused the injury in the first instance. Id. at 6. The court also noted
23 that, pursuant to the bargained-for terms of the contract, the defendant had a duty to notify
24 the plaintiff when an offer, if any, was made. Id.

25 Here, however, the alleged breach of contract was not difficult to detect. Plaintiffs’
26 rights under this contract, if any, flowed directly through the owner and annuitant, Gene
27 Cain, who knew the precise dates upon which the predetermined payments were scheduled to
28 be made. Second, defendant here was not in a far superior position to comprehend the

1 alleged breach. To the contrary, the defendant believed that it was faithfully executing the
2 annuity contract when it made the payments to Juan Perez. In fact, defendant only formally
3 became aware of a potential breach when Stephen Cain and Gene Cain contacted the carrier
4 after learning that plaintiffs had not received the \$10,000 payments. Finally, defendant did
5 not have any basis for believing that plaintiffs remained ignorant about the alleged breaches.
6 In truth, Gene Cain was in a superior position to comprehend the alleged breach when he was
7 effectively put on notice of defendant's understanding of the contract when it mailed him the
8 first \$900 check. Unlike in Gryczman, where the contract required defendant to give notice
9 to plaintiff and that failure prevented plaintiff from discovering the breach, the only relevant
10 duty in the present case was the fiduciary duty that existed between attorney Gene Cain and
11 plaintiffs, his clients.³

12 In addition, plaintiffs have failed to show that the "overarching principles" noted in
13 Gryczman support the application of the discovery rule in this case. 107 Cal. App. 4th at 5-6.
14 First, while plaintiffs have submitted evidence that circumstances prevented them from
15 knowing about the alleged breach, defendant is not responsible for the existence of those
16 circumstances. Second, plaintiffs have made no showing that defendant in this case has
17 sought to knowingly profit from such ignorance. In fact, defendant's best result from this
18 litigation is a determination that it does not have to make certain annuity payments *twice*.

19 Finally, this case does not involve the classic kind of fiduciary relationship between
20 the parties that gives rise to the application of the discovery rule. See April, 147 Cal. App.
21 3d at 827-28. Though California cases have recognized a "special relationship" between an
22 insurer and an insured, they have rejected the existence of a fiduciary relationship between
23 insurer and insured. Vu. v. Prudential Prop. & Cas. Ins. Co., 26 Cal. 4th 1142, 1150-51
24 (2001) ("The insurer-insured relationship, however, is not a true "fiduciary relationship" in
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26 ³Based on the fact that Gene Cain's name appears on the papers in this lawsuit, the
27 Court is concerned that plaintiff's attorneys have failed to uphold their obligations under this
28 fiduciary duty. Accordingly, the Court hereby orders Hugo Torbet, who represented plaintiffs
at oral argument, to provide copies of this opinion to his clients, Janet Perez-Encinas and
Wendy Perez.

1 the same sense as the relationship between trustee and beneficiary, or attorney and client.”)
2 To be sure, an insurer’s obligations under this “special relationship” are greater than those of
3 a party to an ordinary commercial contract. Chase v. Blue Cross of Cal., 42 Cal. App. 4th
4 1142, 1152 (1996). In particular, an insurer is required to “give at least as much
5 consideration to the welfare of its insured as it gives to its own interests.” Egan v. Mutual of
6 Omaha Ins. Co., 24 Cal. 3d 809, 818 (1979). This duty, however, generally results from the
7 unique nature of insurance policy contracts, which are often not bargained-for and usually
8 quite complicated. Chase, 42 Cal. App. 4th at 1152. To that end, a traditional insurer
9 maintains “the duty reasonably to inform an insured of an insured’s rights and obligations
10 under the insurance policy.” Davis v. Blue Cross of N. Cal., 25 Cal. 3d 418, 428 (1979).
11 Here, the relevant contract is a simple eight-page document that was based on an application
12 from a trained lawyer, Gene Cain. Similar to life insurance policies, the insured’s rights were
13 clear and well-established from the outset. Accordingly, plaintiffs’ reference to the special
14 relationship between the insured and the insurer is inapposite here, and therefore does not
15 invoke the application of the discovery rule.

16 For the foregoing reasons, the Court finds that the discovery rule is not applicable in
17 this case. Plaintiffs’ suit was filed in September 2005, more than six years from the date of
18 defendant’s most recent alleged breach. Because the four-year statute of limitations has not
19 been tolled, plaintiffs’ claims are time barred. Accordingly, defendant’s motion for summary
20 judgment is GRANTED.

21 **II. Plaintiffs’ Breach of Contract Claim**

22 Even if the plaintiffs’ claims are not barred by the four-year statute of limitations, they
23 nevertheless fail as a matter of law.

24 _____The essential elements of a breach of contract action are: (1) the existence of a
25 contract; (2) the plaintiff’s performance of the contract or excuse for nonperformance; (3) the
26 defendant’s breach; and (4) the resulting harm to the plaintiff. See Careau & Co. v. Sec. Pac.
27 Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1388 (1990).

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1 In this case, the contract in question is an annuity. “An annuity is a contract between a
2 seller (usually an insurance company) and a buyer (usually an individual, also referred to as
3 the ‘annuitant’) whereby the annuitant purchases the right to receive a stream of periodic
4 payments to be paid either for a fixed term or for the life of the purchaser or other designated
5 beneficiary.” Patenaude v. Equitable Life Assur. Soc’y of the United States, 290 F.3d 1020,
6 1027 (9th Cir. 2002) (internal quotation and citation omitted).

7 Defendant argues that it committed no breach of contract because it fully complied
8 with the straightforward terms of the contract.⁴ In the application, Gene Cain designated
9 himself as the “Owner” and “Annuitant” of the annuity. By the terms of the annuity, Cain, as
10 the annuitant, was entitled to the annuity payments.⁵ Plaintiffs are listed as “Beneficiar[ies]”
11 of the various payments, and under the plain meaning of the contract, have no right to receive
12 any of the contract benefits until either the death of the annuitant or an assignment of the
13 contract to them by the annuitant. See Def.’s Ex. B at 4. (“If two or more persons are named
14 [as beneficiaries], those surviving the Annuitant will share equally unless otherwise stated.”);
15 and id. (providing that “[b]enefit payments will be made to the Annuitant unless otherwise
16 designated in the application.”). Generally accepted principles of insurance law further
17 support these definitions:

18 The annuity “beneficiary,” apart from the annuitant who receives
19 his periodic payments during his lifetime, usually refers to the
20 recipient of the benefits under an annuity contract after the
21 annuitant dies. He is, in general, the beneficiary of the refund
22 portions of the annuity contract. A beneficiary, other than the
23 annuitant, ordinarily has no absolute right in an annuity contract,
since a living annuitant who is the owner and has a right to any
payments due under the contract has both the rights to assign the
contract (if the contract does not prohibit assignment), and if no
irrevocable beneficiary designation is in place, to change the
beneficiary.

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⁴According to an integration clause in the application, the three-page application and
26 five-page contract constitute the entire agreement between the parties. Def.’s Ex. A.

27 ⁵According to the policy, defendant “agrees to pay the Benefit to the Annuitant as
28 provided on page 3 of this contract.” Def.’s Ex. B at 1. On page 3, Gene Cain is designated
as the annuitant. Id. at 3; see also id. at 4 (“Benefit payments will be made to Annuitant
unless otherwise designated in the application.”).

1 4-10 The Law of Life and Health Insurance § 10.04 (Matthew Bender & Co. 2005). See also
2 3-20 California Insurance Law & Practice § 20.20 (the annuitant is the recipient in an annuity
3 policy); 3-20 California Insurance Law & Practice § 20.21 (“An annuity certain makes
4 periodic payments to the annuitant for a specified term without regard to the annuitant’s
5 actual life or death. If the annuitant dies prior to the expiration of the specified term, the
6 payments continue to the annuitant’s beneficiary.”); and 4-10 The Law of Life and Health
7 Insurance § 10.02 (“When an annuity contract is purchased, an insurer basically collects
8 money from an annuitant and then liquidates its obligation simply by making stipulated
9 payments to the annuitant.”)

10 Plaintiffs argue that the annuity is ambiguous because Gene Cain allegedly designated
11 plaintiffs to receive the disputed payments when he listed them as beneficiaries in the
12 application. Plaintiffs state that Gene Cain intended for the word beneficiary to carry a
13 different meaning from the meaning spelled out in the contract; to wit, that a beneficiary is an
14 individual who receives the benefit of the contract. See Restatement 2d of Contracts, § 2
15 (stating that “where performance will benefit a person other than the promisee, that person is
16 a beneficiary”).

17 In light of the clear definition of the term “beneficiary” in the contract, the Court is
18 unpersuaded by plaintiffs’ argument. Taken out of the context of this particular contract, the
19 Court recognizes that a layperson could reasonably interpret the word beneficiary as plaintiffs
20 define it. But under the principles of insurance contract interpretation, the Court must
21 interpret language in the context of the entire contract, not in the abstract. See Bank of the
22 West, 2 Cal. 4th at 1265. Further, the word beneficiary as used here is not ambiguous. See
23 Bay Cities Paving Grading, Inc., 5 Cal. 4th 854, 867 (1993) (stating that a term is generally
24 considered to be ambiguous if two reasonable yet differing definitions can be applied). The
25 contract states that payments go not to the beneficiary but to the annuitant. Even if the
26 money was intended for the benefit of the plaintiffs, the policy plainly states that the rights of
27 the beneficiaries do not vest until the death of the annuitant or until such beneficiaries are
28 assigned rights under the contract.

1 Unlike the average insurance policy contract, this annuity contract is short and clear.
2 Moreover, Gene Cain, the applicant and annuitant, is not an unsophisticated layperson;
3 rather, he is a lawyer purportedly trained to read any contract to which he signs his name.
4 See AIU Ins. Co., 51 Cal.3d at 823 (noting that courts may consider the legal sophistication
5 of a person entering an insurance contract in interpreting the resulting contract).
6 Furthermore, even if Gene Cain neglected to read the final contract which defined the rights
7 of beneficiaries under the agreement, and even if his intention was to designate the individual
8 Perez family members to be the payees of the annuity, he was effectively placed on notice
9 that defendant did not interpret its obligations in the same manner when he received the first
10 \$900 payment that he believed should have been sent to Juan Perez. Despite this red flag,
11 Cain apparently did not make efforts to ensure that the annuity was structured as he claims he
12 had intended it to be. Instead, he merely sent a letter to defendant directing the defendant to
13 change the annuity draft payee to Juan Perez and make out “all further checks due” to Perez.
14 To now argue, as Gene Cain does, that the insurance company breached its contract after it
15 followed his directions is unavailing.

16 Thus, the Court concludes that the contract is unambiguous and that its meaning is
17 facially apparent. Because the express language of the contract governs, the Court need look
18 no further than the four corners of the fully integrated annuity contract in order to discern the
19 meaning of the document. Accordingly, plaintiffs’ breach of contract claim fails as a matter
20 of law because defendant satisfactorily performed its obligations under the contract.
21 Thus, defendant’s motion for summary judgment as to the breach of contract claim is
22 GRANTED.

23 **III. The Implied Covenant of Good Faith and Fair Dealing**

24 _____Under California law, all insurance contracts contain an implied covenant of good
25 faith and fair dealing. Egan, 24 Cal. 3d at 818. A breach of the underlying contract is not
26 necessary to establish a bad faith claim. See Carma Developers (Cal.), Inc. v. Marathon Dev.
27 Cal., Inc., 2 Cal. 4th 342, 372-73 (1992). In order to establish a breach of the implied
28 covenant of good faith and fair dealing, a plaintiff must show that benefits were denied and

1 that the reason for the denial was unreasonable or without proper cause. See Love v. Fire
2 Ins. Exch., 221 Cal. App. 3d 1136, 1151 (1990). A defendant is entitled to summary
3 judgment if it can show that there was a genuine dispute as to coverage such that the denial
4 could be termed reasonable. Congleton v. Nat'l Union Fire Ins. Co., 189 Cal. App. 3d 51, 59
5 (1987) (holding that the ultimate test of liability is "whether the refusal to pay policy benefits
6 was unreasonable") (internal quotations and citations omitted).

7 Here, as discussed above, because the Court finds that defendant did not breach the
8 contract, it further concludes that it did not act in bad faith. Even if defendant did breach the
9 contract, however, it acted reasonably in making payments to Juan Perez. Defendant first
10 sent payments to the annuitant, Gene Cain, which was not an unreasonable interpretation of
11 the contract. When Cain later sent a letter to defendant directing it to send "all further checks
12 due" to Juan Perez, the company complied with Cain's instructions and did not unreasonably
13 interpret that as an assignment of his rights.

14 This is not the more typical case of stonewalling by an insurance company so as to
15 avoid its duty to make payments and thus reap some benefit for itself. Quite to the contrary,
16 defendant has paid out on the policy. The issue concerns whether it sent those payments, in
17 error, to a father rather than his children. Defendant realized no benefit by sending the
18 \$80,000 at issue to Juan Perez as opposed to plaintiffs. Because defendant did not act
19 unreasonably in this case, plaintiffs' claim fails as a matter of law and defendant's motion for
20 summary judgment is GRANTED.

21 **III. Punitive Damages**

22 Before a plaintiff may recover punitive damages in a bad faith action against an
23 insurer, he or she must first establish by clear and convincing evidence that the insurer acted
24 with malice, oppression or fraud. Lunsford v. Am. Guar. & Liab. Co., 18 F.3d 653, 656 (9th
25 Cir. 1994) (citation omitted); see also Tomaselli v. Transamerica Ins. Co., 25 Cal. App. 4th
26 1269, 1286-88 (1994). This higher clear and convincing evidentiary standard applies at
27 every stage of the litigation process, including summary adjudication. See Basich v. Allstate
28 Ins. Co., 87 Cal. App. 4th 1112, 1121 (2001). A plaintiff who is not able to survive summary

1 judgment on an insurance bad faith claim, is also unable to survive summary judgment on a
2 related claim for punitive damages. Adams v. Allstate Ins. Co., 187 F. Supp. 2d 1219, 1231
3 (C. D. Cal. 2002).

4 In light of this Court's conclusion that defendant is entitled to summary judgment on
5 plaintiffs' breach of contract and breach of the implied covenant of good faith and fair
6 dealing claims, it necessarily follows the defendant is entitled to the same relief with respect
7 to the related punitive damages claim. Thus, defendant's motion for summary judgment as to
8 punitive damages is hereby GRANTED.

9 **CONCLUSION**

10 For the foregoing reasons, defendant's motion for summary judgment is GRANTED
11 in its entirety both because plaintiffs' claims are barred by the statute of limitations and
12 because defendant properly performed its contractual obligations pursuant to the express and
13 unambiguous terms of the annuity.

14 **IT IS SO ORDERED.**

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17 Dated: July 26, 2006
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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE